MOTION FILED
SEP 3 0 1985

No. 85-364

IN THE
Supreme Court of the United States
OCTOBER TERM, 1985

BEST AVAILABLE COPY

In the Interest of A.L.C.,
a person under the age of 18:

DEPARTMENT OF SOCIAL SERVICES
OF RUSK COUNTY,
Petitioner,

A.L.C., by her Guardian ad Litem,
Petitioner,

MR. AND MRS. B.J.,
Petitioners,

v.

J.C.,
Respondent.

On Petition for a Writ of Certiorari to the Supreme Court of Wisconsin

MOTION FOR LEAVE TO FILE BRIEF AMICUS CURIAE AND BRIEF AMICI CURIAE OF THE NATIONAL ASSOCIATION OF COUNSEL FOR CHILDREN IN SUPPORT OF PETITIONERS

CHRISTIAN R. VAN DEUSEN *
MARGARET A. COBERLY
CHRISTIAN R. VAN DEUSEN, INC.
A Professional Corporation
615 Civic Center Drive West
Suite 305
Santa Ana, California 92701
714-547-6226

NATIONAL ASSOCIATION OF
COUNSEL FOR CHILDREN
1205 Oneida Street
Denver, Colorado 80220
303-321-3963

* Counsel of Record

WILSON - EPES PRINTING CO., INC. - 789-0096 - WASHINGTON, D.C. 20001

IN THE

Supreme Court of the United States

OCTOBER TERM, 1985

No. 85-364

In the Interest of A.L.C.,
a person under the age of 18:

DEPARTMENT OF SOCIAL SERVICES
OF RUSK COUNTY,
Petitioner,

A.L.C., by her Guardian ad Litem,
Petitioner,

MR. AND MRS. B.J.,
Petitioners,

v.

J.C.,
Respondent.

On Petition for a Writ of Certiorari to the Supreme Court of Wisconsin

---

MOTION FOR LEAVE TO FILE BRIEF AMICUS CURIAE

To the Honorable Warren E. Burger, Chief Justice of the Supreme Court of the United States of America and to the Associate Justices.

IT IS RESPECTFULLY REQUESTED that the undersigned, Christian R. Van Deusen, Esquire and the National Association of Counsel for Children be granted leave to file an amicus curiae in support of the position of A.L.C., a person under the age of 18. This application is based on the following facts:

The applicant is licensed to practice before this Supreme Court.

Appellant A.L.C. filed a Petition for Writ of Certiorari and supporting brief.

The issues in this case involve the due process rights of a child and her psychological parents to maintain their relationship; judicial recognition of the best interests of foster and adoptive children; and the status of adoptive parents, biological parents, and children in light of the Due Process and Equal Protection Clauses of the Fourteenth Amendment to the Constitution of the United States of America.

My firm's practice consists exclusively of adoptions, foster parent adoptions, termination of parental rights, children's rights cases, and associated litigation and appeals.

My firm currently has cases in trial courts in counties throughout the State of California that involve the issues currently on appeal in this case. Those cases are as follows:

Orange County, Case Number AD-36119;

Los Angeles County, Case Number CF-006072;

Los Angeles County, Case Number A-14928;

Orange County Case Numbers AD-35842/A-126566;

San Diego County, Case Number A-29782

Los Angeles County, Case Number CF-003074

San Diego County, Case Number A-28833

Humboldt County, Case Numbers J-409149/3309

Kern County, Case Number F-801/Juvenile Department 52879

Riverside County, Case Number A 10525

Orange County, Case Number AD-36931

In total, during the past twelve (12) months this firm has litigated 29 adoption cases in which parental rights were at issue. An equal number was resolved by waiver or default.

My firm currently has a case before the 1st District Court of Appeals of the State of California (Humboldt County Case Numbers 24673 and 3216—Termination of Parental Rights) and two cases before the 4th District Court of Appeals (Orange County Case numbers AD 36649 and J407060—Termination of Parental Rights and (case # G001472—Rights of a Biological Father) all of which involve these constitutional issues.

My firm represents Petitioners in the case of *Michael U. v. Jamie B.* 160 Cal.App. 3d 193 (1984) which case was decided by the Supreme Court of the State of California. This case involves the rights of a casual father and our State Supreme Court has, in that decision failed to address the constitutional rights of the psychological parents vs biological parents and the children involved.

I am currently assisting counsel on a case before the Illinois Supreme Court, and a case in Syracuse, New York both involve the rights of foster parents, adoptive parents and the subject children.

The applicant has frequently been court appointed to represent the best interest of minor children.

The applicant is serving a 4th term on the California State Bar Committee on Adoptions.

The applicant has testified before the California Select Committee on Youth and Children.

The applicant has been granted leave to file a brief amicus curiae before the Supreme Court of the State of California in the case of *In re Baby Girl M.* 37 Cal. 3d 65 (1984) which involved the rights of a biological father.

The applicant has lectured to the annual judges' family law seminar of the California Center for Judicial Education and Research on the subject of Adoptions, Abandonments and Paternity Cases, and authored the Syllabus on those topics.

In January of 1985 the District Court, Eastern District of California rendered a decision in *Brown v. County of San Juaquin*, [601 F. Supp. 651 (1985)] which recognized, in light of California State Law, the due process rights of a psychological parent and child to maintain that relationship.

In *Brown (supra)*, the Court cited *Smith v. Offer* [431 U.S. 816 (1977)] and *Lehr v. Robertson* 463 U.S. 248 (1983)] in reasoning that Fourteenth Amendment rights to Due Process attach to a psychological parent and child. It is necessary to our practice and the pending cases that this Court affirm the validity of *Brown's* interpretation of its cases.

The decision in *Brown* conflicts directly with the 1984 California Supreme Court case *In re Baby Girl M.* For over 25 years California State Courts have considered District Court cases to be "merely persuasive" [*Rahr Aircraft Corp. v. County of San Diego* 5 Cal. 2d 759 (1959)] However, that case reaches its decision as applicable to issues of law on which the Supreme Court of the United States has not spoken and on which the District Courts are divided in their opinions. It is, therefore, necessary that the Court address the validity of the *Brown* decision in order to define the standards which the State Courts must apply in determining parental rights cases.

Because *Brown* and *Baby Girl M.* appear to be in conflict, it is necessary that leave be granted to file a brief amicus curiae because of the involvement in *Michael U. v. Jamie B.* which was decided September 19, 1985 by the Supreme Court of California and has clouded further

the issue of *Baby Girl M.* and *Brown v. County of San Juaquin.*

If the Court affirms the psychological parent and child's right to Due Process as recognized in *Brown*, it is necessary to this firm's practice that the Court clarify what affect those rights have on the burden of proof and the standard of proof in right of the Equal Protection and Due Process Clauses of the Fourteenth Amendment to the Constitution of the United States of America.

Because the nature of this applicants practice and its interest in the issues on appeal, it is uniquely qualified to assist the court by the presentation of an amicus curiae brief.

The National Association of Counsel for Children is a voluntary, national membership organization concerned with the rights and interests of children who are the subjects of child protective, matrimonial, and custody litigation. Established in 1977, the Association has 450 members in 39 States. Membership is predominantly lawyers and judges, but also includes pediatricians, social workers, child psychiatrists and psychologists, law enforcement officers, and private citizens. The Association issues standards and guidelines on the representation of children, holds seminars on legal proceedings affecting children, prepares training and resource materials, and publishes a quarterly newsletter, The Guardian.

The Association's interest goes beyond its generalized concern over the legal rights of children. The majority of the Association's members are involved in representing children before the courts; many other members provide court related services to them. Hence, the outcome of this case will have a tangible impact on the work and professional practice of the Association's members.

Counsel LINDA BALISLE, TERRY NUSSBERGER and MARY HOEL have consented to the filing of the Amicus Curiae brief. Their letters of consent will be

filed with the Court concurrently with this brief. Counsel RICK MARTIN, Assistant State Public Defender, has not consented.

Such brief is prepared and filed concurrently herewith.

Respectfully submitted,

CHRISTIAN R. VAN DEUSEN
MARGARET A. COBERLY
CHRISTIAN R. VAN DEUSEN, INC.
A Professional Corporation
615 Civic Center Drive West
Suite 305
Santa Ana, California 92701
714-547-6226

Dated Sept. 30, 1985

QUESTIONS PRESENTED

Does equal protection and due process [Clauses of the 14th Amendment] require that the psychological parent-child relationship be treated the same as the biological relationship?

Is the best interests of the child the determinative factor in any dispute over custody in an adoption proceeding?

TABLE OF CONTENTS

	Page
QUESTIONS PRESENTED	i
TABLE OF AUTHORITIES	iv
INTRODUCTION	1
ARGUMENTS ON THE QUESTIONS PRESENTED	2
CONCLUSION	12

TABLE OF AUTHORITIES

Cases: Page

Adoption of Barnett, 54 Cal. 2d 370 (1960) 5, 7
Adoption of Duckett, 48 Cal. App. 3d 244 (1975) .. 7
Adoption of Michelle T., 44 Cal. App. 3d 699 (1975) 9, 11
Bennett v. Jeffreys, 40 N.Y. 2d at 550, 387 N.Y.S. 2d at 827, 356 N.E. 2d at 284 3
Bixby v. Pierno, 4 Cal 3d 130 (1971) 5
Brown v. County of San Joaquin, 601 F. Supp. 653 (1985) 4
Caban v. Mohammed, 441 U.S. 380, 402 (1979) 3
C.V.C. v. Superior Court, 29 Cal. App. 3d 909 (1973) 5
Department of Family and Children's Services, 563 F.2d 1209 3
Drummond v. Fulton County, 563 F.2d at 1209 3
Griswold v. Connecticut, 381 U.S. 479 (1965) 6
In Re Baby Girl M., 37 Cal. 3d 65 (1984) 4
Kyees v. County Department of Public Welfare of Tippicanoe Co., 600 F.2d 693 (7th Cir. 1979) 3
Lehr v. Robertson, 463 U.S. 248 (1982) 3
Michael U. v. Jamie B., Docket #L.A. 3204, September 19, 1985 4
Polovchak v. Meese, etc., Case #85-2297 and 85-2305 C5595, September 10, 1985 11-12
Quilloin v. Walcott, 434 U.S. 246 (1977) 2
San Diego County Dept. of Public Welfare v. Superior Court, 7 Cal 3d 1 (1972) 7
Shelly v. Kramer, 334 U.S. 1 (1948) 6
Sherrad v. Owens, 484 F. Supp. 729 (W.D. Mich. 1980) 3
Stanley v. Illinois, 405 U.S. 645 (1972) 2

Miscellaneous:

Child Custody Act of 1970, Mich. Comp. Laws Ann, § 722.23 (Supp. 1976) 9
TenBroek, *California's Adoption Law and Programs*, 6 Hastings L.J. 261 (1955) 6

IN THE

Supreme Court of the United States

OCTOBER TERM, 1985

No. 85-364

In the Interest of A.L.C.,
a person under the age of 18:

DEPARTMENT OF SOCIAL SERVICES
OF RUSK COUNTY,
Petitioner,

A.L.C., by her Guardian ad Litem,
Petitioner,

MR. AND MRS. B.J.,
Petitioners,

v.

J.C.,
Respondent.

On Petition for a Writ of Certiorari to the Supreme Court of Wisconsin

---

BRIEF AMICI CURIAE OF THE NATIONAL ASSOCIATION OF COUNSEL FOR CHILDREN IN SUPPORT OF PETITIONERS

Amici respectfully request that a writ of certiorari issue to review an order of the Wisconsin Supreme Court, dated and entered June 4, 1985, which denied petitioners' request for a review of a Wisconsin Court of Appeals' decision issued on April 16, 1985.

INTRODUCTION

The various States have applied disparate standards in parental rights cases, and in the case of California even

the casual father who has never "ligitimated" the child may pursue custody. Custody may not be denied him unless it can be shown that placing custody with him would be detrimental to the child.

Once he takes custody, he attains the rights of a presumed or marital father and has the power to veto the adoption. Such a veto is invariably contrary to the best interests of a child that has established a psychological parent child relationship, and obviously causes a grievous loss to the adopting (psychological) parents.

Amici here refer to and incorporate the following items of the petition for writ of certiorari:

Opinions below

Jurisdiction

Constitutional Provisions Involved

Statement of the Case

Reason for Granting the Writ.

ARGUMENTS ON THE QUESTIONS PRESENTED

The Court in *Stanley v. Illinois*, 405 U.S. 645 (1972) held that parental rights could not be terminated by State action without due process. In that factual situation the biological father clearly was also the psychological father. Although the Court does not address it directly, the decision that he would be entitled to due process under the 14th Amendment does not preclude a finding that the right to due process would attach if the psychological relationship were to be considered on its own.

The protection afforded the familial relationship was further clarified in *Quilloin v. Walcott*, 434 U.S. 246, 255 (1977) quoting from *Offer*, 431 U.S. at 683 concurring opinion by Stewart J.

> Rather, the result of the adoption in this case is to give full recognition to a family unit already in ex-

> istence, a result desired by all concerned, except appellant. Whatever might be required in other situations, we cannot say that the State was required in this situation to find anything more than that the adoption, and denial of legitimation, were in the "best interests of the child. *Quilloin* at 255

Since OFFER, all Federal courts considering the issue have recognized that, at some point, the duration of a loving foster care placement, and the consequent emotional and familial ties it creates, establish a liberty interest in its continuance. *Kyees v. County Department of Public Welfare of Tippicanoe Co.*, 600 F.2d 693, 699 (7th Cir. 1979); *Drummond v. Fulton County Department of Family and Children's Services*, 563 F.2d at 1209, *Sherrad v. Owens*, 484 F. Supp. 728, 740-741 (W.D. Mich. 1980). See also, *Caban v. Mohammed*, 441 U.S. 380, 402 (1979) (Stevens, J., dissenting) ("The state interest in facilitating adoption in appropriate cases is strong—perhaps even 'compelling' "). In fact, at least one State Supreme Court has held that in certain "extraordinary circumstances", an independent right to termination and adoption arises, even in the absence of a statutory provision, because "the psychological trauma of removal is grave enough to threaten destruction of the child." *Bennett v. Jeffreys*, 40 N.Y.2d at 550, 387 N.Y.S.2d at 827, 356 N.E.2d at 284.

This Court's decision in *Lehr v. Robertson*, 463 U.S. 248 (1982) protects familial relationship based on the day to day nurture and care between parent and child.

Interpreting California law, the U.S. District Court (E.D. Cal) in a decision that cited *Lehr* stated:

> In short, the court concludes that the foster family relationship is sufficiently similar to other familial relationships held by the Supreme Court to be entitled to constitutional protection. The court reaches this conclusion because the foster parent-foster child relationship has precisely the same form and content

> as a healthy biological parent-child relationship, and in the face of that reality, the circumstances of its creation are immaterial.

Brown v. County of San Joaquin, 601 F. Supp. 653 (1985)

That court then goes on to state that: "the lodestar for any permanent plan for [the child] is her best interest."

The California Supreme Court in the case of *Michael U. v. Jamie B.* Docket #L.A.32014 September 19, 1985, declined to consider and rule on the question of the constitutional rights that attach to the parent child relationship.

In a 5 to 2 decision the Court found itself strongly divided in issuing 4 separate opinions, 3 for the majority and a dissent. Justices MASK, LUCAS and KAUS concurred in 2 separate opinions:

> The more I think about it, the more certain I am that the trouble with this case in not so much the fact-finding process, but this court's unfortunate misstep in *In re Baby Girl M.* (1984) 37 Cal 3d 65. The sooner we rectify that mistake, the better. KAUS, J., concurring.

> *In re Baby Girl M.* (1984) 37 Cal.3d 65, established by a divided decision of this court, that a casual inseminator could be declared a presumed father under the law and thus have the power to frustrate the unmarried mother's consent to adoption of her child by a qualified family and prevent the child from being reared in an environment with loving adoptive parents.

> This dramatically illustrates the fallacy of any test other than the best interest of the child. *Baby Girl M.* requires a finding that custody in the biological father would be detrimental to the child in order to deny him the same rights as a legally presumed father. MOSK, J & LUCAS J. concurring.

Although the plurality of 3 would reverse *Baby Girl M.* the required majority was lacking.

The rights of non-biological, or psychological, parents received clear constitutional protection in 1973. In *C.V.C. v. Superior Court*, 29 Cal. App. 3d 909 (1973), the court heard an adoptive couples' appeal when their child was removed without a hearing by the agency, one year after being placed with them. The court then held that:

> "the Fourteenth Amendments' guarantee of due process of law requires notice and opportunity to be heard before an individual suffers governmental deprivation of a fundamental interest . . . In determining whether a status or right is fundamental, the courts consider its effect in human terms and its importance to the individuals' life situation. (*Bixby v. Pierno.* (1971) 4 Cal. 3d 130, 144 [93 Cal. Rptr. 234, 481 P.2d 242].)
>
> Gain of a child for adoption fulfills the prospective parents' most cherished hopes. The event marks the onset of a close and meaningful relationship. The emotional investment does not await the ultimate decree of adoption. Love and mutual dependence set in ahead of official cachets, administrative or judicial. The placement initiates the closest conceivable counterpart of the relationship of parent and child.' (*Adoption of Barnett*, (1960) 54 Cal. 2d 370, 377.) To characterize enforced removal of the child as a 'grievous loss' is to state the obvious. (29 Cal. 3d at 916).
>
> The governmental interest is weighty. The statutory system for relinquishment to the agency, for agency placement and agency approval, bespeaks a state policy to promote the child's welfare in derogation of all other values . . . *C.V.C.* 29 Cal. App.3d supra at 916.

Although the notion that "blood is thicker than water" is still prevalent, Justice Friedman in FN7 makes this revealing observation:

> Is [biological parenthood] more natural or more important than the mutual, reciprocal and continuous relationship between parent and child, which may occur in adoptive or non-adoptive families, involved in the rearing of a child from infancy to maturity with all of the impact of day-to-day care and upbringing upon character, psychology, outlook, emotional make-up, and even biology which that entails? In this sense, does not nurture 'do the work of nature' and create one a child who by nature is a stranger? In fact, in this sense, does not nature do the work of nature and create one a child who by nature is not a stranger? (TenBroek, *California's Adoption Law and Programs* 6 Hastings L.J. 261, 276 (1955).

Once the standards of constitutional protection are brought into play, the parties must be treated equally. Indeed, to impose upon one type of parent a stricter standard or heavier burden of proof violates the 14th Amendment.

Further, to decide the future of a child, and the custodial placement in which the child will be forced to live, without consideration of the child's best interest, is a violation of due process and equal protection.

State intervention into enumerated or implied rights in the United States Constitution has been held to trigger a strict scrutiny of the statutes involved to insure that they do not violate the Equal Protection Clause of the Fourteenth Amendment. (*Shelly v. Kramer*, 334 U.S. 1 (1948); *Griswold v. Connecticut* 381 U.S. 479 (1965).

Brown (*supra*) recognizes the same fundamental liberty interest to attach to psychological parent-child relationships as attach to a biological parent child relationship. To avoid violating the Equal Protection Clause of the Fourteenth Amendment, it is essential to not give either the biological parent, the psychological parent or the child preference, one over the other. The same burden of proof must apply to each.

The pivotal factor must always be the best interest of the child.

In making a determination of the "best interests of the child," as referred to in the codes, the author of 49 Southern California Law Review 10, 34 provides some guidelines:

> "Once consent to the adoption has been given, California law, unlike the law of some jurisdictions, generally protects the child's interest in remaining in an adoptive home that has become its real home . . . In an independent adoption, consent may be withdrawn only with court approval after a hearing. The court may permit withdrawal of the consent and return of the child to his natural parents only if, under all the circumstances, withdrawal is reasonable and in the best interests of the child. Since his provision gives no specific guidelines to the courts, it is recommended that language be added to the effect that withdrawal of consent by a parent should, as a rule, be denied once the child has become settled in the adoptive home."

Adoption of Barnett (1960) 54 Cal.2d 370, 6 Cal. Rptr. 562, 354 P.2d 18, held that:

> "The rule of strict construction of our adoption statutes in favor of the natural parents. . . . , being inconsistent with the decisions of this court . . . . , as well as with Civil Code Section 4, is disapproved."

The court in *Adoption of Duckett* (1975) 48 Cal.App. 3d 244, 121 Cal.Rptr. 574, citing *San Diego County Department of Public Welfare v. Superior Court* (1972) 7 Cal.3d 1, 101 Cal.Rptr. 541, 496 P.2d 453, stated that:

> "The requirement of consent by a natural parent is not strictly construed in favor of the rights of the natural parent, but *instead is liberally construed in order to effect the object of the adoption statute in promoting the welfare of the children.*" (emphasis added)

The nature of these cases are such that emotional factors favoring either the biological parent or the adopting parents are always present and pose an obstacle to properly analyzing the case from the perspective of the child. In order to analyze this question, a number of factors must be taken into consideration. The court, of course, has a great deal of discretion, not only in determining what these various factors should be, but also in weighing the effect of each factor. Clearly, factors such as comparative wealth and parental preference have no place in the best interests analysis. It is submitted that the following should be considered.

The New York University Law Review, 446, at page 468 and f/n 27, specifically discusses certain factors with reference to the child's best interest and cites the Child Custody Act of Michigan when an attempt was made to isolate the factors for evaluation purposes:

> "For example, in determining the child's best interests, judges might be directed to consider a variety of factors, including the wishes of the child (if of the age of reason), the length of time the child has been separated from the natural parents, the quality of the child's relationship with the contesting parties, and the testimony of psychiatrists or child psychologists on the potential effect on the child of alternative dispositions.
>
> "At least one state statute has attempted to define the child's 'best interest:'
>
> " 'Best interest of the child' means the sum total of the following factors to be considered, evaluated and determined by the court:
>
> "(a) The love, affection and other emotional ties existing between the competing parties and the child.
>
> "(b) The capacity and disposition of competing parties to give the child love, affection and guidance and continuation of the educating and raising of the child in its religion or creed, if any.

"(c) The capacity and disposition of competing parties to provide the child with food, clothing, medical care or other remedial care recognized and permitted under the law of this state in lieu of medical care, and other material needs.

"(d) The length of time the child has lived in a stable, satisfactory environment and the desirability of maintaining continuity.

"(e) The permanence, as a family unit, of the existing or proposed custodial home.

"(f) The moral fitness of the competing parties.

"(g) The mental and physical health of the competing parties.

"(h) The home, school and community record of the child.

"(i) The reasonable preference of the child, if the court deems the child to be of sufficient age to express preference.

"(j) Any other factor considered by the court to be relevant to a particular child custody dispute."

Child Custody Act of 1970, Mich. Comp. Laws Ann., Section 722.23 (Supp. 1976)

The purpose of discussing the various factors in detail is to provide assistance to this court as to the impact of experts, writers and judicial decisions on the best interests question.

The factors submitted are certainly not intended to be all inclusive and, by reason of the nature of the question, may be overlapping in nature.

A comparative analysis without the application of any parental preference is required. This analysis must be from the perspective of the child, not the biological parent or the adoptive parent. *Adoption of Michelle T.* (1975) 44 Cal.App.3d 699, 706-8, states:

Recently, authorities have recognized the importance of the continuity of the environment and the trauma to a young child caused by separation from its established home has been viewed by the courts as a serious consideration in adoption cases. (*In re Adoption of Tachick* (1973) 60 Wis.2d 540 [210 N.W.2d 865, 869-871, and fns. 9 and 10 at p. 872]).

Furthermore, in *Williams v. Neumann* (Ky. App. 1966) 405 S.W.2d 566, the court stated that '[the petitioners have] attended every baby and childhood need and demand of [the child] from the fourth day of her life when she could neither focus her eyes nor raise her head. Up to this hour, according to this record, [she] has known no other mother as she has never seen her natural mother. She is now three and one-half years old and talking. She cannot be suddenly transplanted like a dogwood tree without running serious and dangerous risk of frustration and bewilderment.' (Id. at p. 557;). The court concluded that denial of the petition must be reversed and placed the child with the petitioners. . . .

Furthermore, the concept of 'best interest' presents a relative standard. The question is not whether a particular set of circumstances is in the best interest of the child, but whether a particular set of circumstances relative to an alternative set of circumstances is in the best interest of the child. In this case, the alternative presented is commitment of the child to the Department in order that 'adoptive or other suitable plans' may be arranged. While we recognize the difficulty the Department would have in submitting more definite plans, we conclude that the alternative presented places the court in a difficult position. It is asked to speculate on the future placement and to trust that it might be better than the home provided by petitioners. Although the court is powerless to predict future events which may bear on T.'s welfare, it has nevertheless, by its ruling in favor of the Department, affected the immediate continuity of the child-parent relationship.

> Goldstein proposes refining the 'best interest of the child' to a test which provides for 'the least detrimental available alternative for safeguarding the child's growth and development' (Id. at p. 53). The least detrimental alternative 'is that specific placement . . . . which maximizes, in accord with the child's sense of time and on the basis of short term predictions given the limitations of knowledge, his or her opportunity for being wanted and for maintaining on a continuing basis a relationship with at least one adult who is or will become his psychological parent.' (*Id.* at p. 53). The authors thus suggest that it may be wiser to favor a situation certain, which may not be totally satisfactory, than to engage in predictions of future events which may or may not be in the 'best' interest of the child."

Adoption of Michelle T. 44 Cal. App. 3d 699, 706-8 (1975)

By far the most important issue is the detriment that befalls the child when it is uprooted from the home, and the attachments to the psychological parents are broken. It is now recognized that these attachments form to such a level by age three months.

The syndrome that follows the disruption is anclytic depression. Experts agree that the impact of such a loss will be felt in varying degrees throughout the individuals life. Expert testimony will be required to present to the court the immediate impact, and the symptoms that appear; i.e. regression of verbal skills, motor skills, sleep loss, refusal of food, suppression of the immune system, bowl upset, general failure to thrive, lack of trust, refusal to form new attachments, repeated respiratory infections, etc. The intensity of these symptoms is directly proportional to the intensity of the reciprocal attachments between child and parent.

Amici Curiae respectfully request the court to take Judicial notice of a recent slip opinion from the 7th Circuit Court of Appeals in the matter of *Polovchak v. Meese*

etc. Case #85-2287 and 85-2305 C5595, September 10, 1985. That Court clearly stated the constitutional right of a child under the 14th Amendment to a hearing at which the Court must balance the best interest of the child against the rights of the parents. Although the opinion is not as yet published, it is relevant to the issues herein presented.

CONCLUSION

It is clear from the case law in the various jurisdictions that this Court address these issues and provide guidance in the application of the Constitutional provision and the 14th Amendment.

Respectfully submitted,

CHRISTIAN R. VAN DEUSEN
MARGARET A. [illegible]LY
CHRISTIAN R. VAN DEUSEN, INC.
A Professional Corporation
615 Civic Center Drive West
Suite 305
Santa Ana, California 92701
714-547-6226

NATIONAL ASSOCIATION OF
COUNSEL FOR CHILDREN
1205 Oneida Street
Denver, Colorado 80220
303-321-3963

Dated Sept. 30, 1985